IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 633 OF 2000

Ramchandra Hariba Sargar..... ....Appellant.
(Orig.Accd.No.1)

Versus

The State of Maharashtra ....Respondent.

Mr. B. G. Tangsali Adv. (appointed) for the appellant.

Mr. B. R. Patil, P.P. for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

28.10.2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction passed by the Additional Sessions Judge, Pandharpur on 12.6.2000 in Sessions Case No.70/98 sentencing him to suffer R.I. For three years for the offence punishable u/s.498A and to pay fine of Rs.1000/- in default to suffer imprisonment for period of three years and further sentencing him to suffer life imprisonment u/s.302 and to pay fine of Rs.1000/- in default to suffer rigorous imprisonment for three years, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal and as verbally canvassed before us.

2. With the assistance of the learned advocate for the appellant and the learned

assistant Public Prosecutor we have scrutinized, perused and reappreciated the entire evidence available on record.

3. The prosecution story as it emerges on reappreciation of evidence stated briefly is that accused No.1 was married to the victim Shobha and there were usual marital disturbances between the two. The relationship according to the prosecution was not cordial. Therefore according to the prosecution in the night of 3/4th April, 1998 they in furtherance of their common intention administered poison to Shobha and then throttled her to death. Around 7.00 in the morning of 4.4.1998 information was given to the Police Patil P. W. 7 – S. B. More who was told that Shobha has committed suicide by consuming insecticide. The matter was reported to police, accused persons were arrested and prosecuted. The prosecution has examined nine witnesses to prove its case that it were the accused persons who murdered Shobha having tortured her earlier and therefore consistent with the conclusions convicted accused No.1-husband of the victim both under section 498A of Indian Penal Code and under section 302 of Indian Penal Code to suffer imprisonment for life. The accused Nos.2 and 3 were acquitted. There is no appeal against their acquittal. Present appellant-original accused No.1 has come up in appeal against his conviction. As aforesaid we have reappreciated minutely the evidence on record. P.W. 1 is the doctor who conducted post mortem on the victim Shobha has opined that the death was caused by pressing the neck. However P.W. 2 – Nivrutti Kachare who is the panch and who saw the dead body states that though there were ligature marks on the neck there was stink of poison around the spot and police were also told by P.W. 7 Police Patil that Shobha the victim died by committing suicide by

consuming poison (insecticide). The panchnama is therefore consistent with what was told by P.W. 7 police patil regarding cause of death. Exhibit 22 is duly prove;d by P.W. 2 which clearly states (it is a panchnama) that the spot where the body was found was stinking of insecticide.

4. P.W. 3 – Dilip Aldar is another panch who was present when spot panchnama was drawn. He is panch to the seizure of wet soil from the spot. However there is no evidence regarding analysis of this soil. P.W. 4 – Datu Bansode proves panchnama of clothes of deceased which is inconsequential. P.W. 5 – Hari Kolekar and P.W. 6 – Maruti Kolekar are the relations of the victim and they talk of ill treatment meted out to the victim by the accused month prior to the date of incident. P.W. 7 – S.B. More is the Police Patil who states that he was told by Nanasaheb Kolekar that Shobha died of consuming poison. His statement Ex.35 also mentions that the death was caused due to consumption of poison. P.W. 8 – S. C. Birajdar is the police head constable who reduced into writing the report of the police patil regarding death of Shobha and P.W. 9 – R.M. Rasal is the investigating officer. This in all is the evidence on the basis of which the learned Judge deemed it fit to convict the accused under section 302 of Indian Penal Code.

5. The learned Judge has in para 13 of his order stated the circumstances which appeared against the accused having been duly proved by the prosecution and which in the opinion of the learned Judge were sufficient establishment of the complete chain of circumstances pointing out to the accused as the only guilty person. They read as under:

"(i)The accused subjected Shobha to cruelty on the ground that she was a diabetic and she was unable to conceive and hence she was kept on fast, she was assaulted and she was driven out of the marital home.

(ii)The accused drove Shobha out of home and she had been residing in her parental house till 8 days prior to her undisputed death occurred in the night between 3.4.1998 and 4..4.98.

(iii)The deceased Shobha being the wife of the accused No.1 and daughter-in-law of the accused Nos.2 and 3 was staying in their house wherein all the three accused were residing together.

(iv)Shobha was found dead in her marital house and she died on the night between 3.4.1998 and 4.4.1998.

(v)The death of Shobha was by strangulation and an attempt was made to administer poison to show that Shobha consumed poison to commit suicide.

(vi)No cause has been given on behalf of the accused as to why Shobha would commit suicide.

(vii)The accused did not inform the Police Patil P.W. 7 Shnakar More about the death of Shobha.

The learned Judge therefore thought that the guilt was properly proved by the prosecution. Assuming that the prosecution has proved via P. W. 5 – Hari Kolekar and P. W. 6- Maruti Kolekar that Shobha was subjected to cruelty because she was ill and

unable to conceive, it is obvious from their evidence that it was done months prior to the date of evidence and cannot therefore have any reasonable nexus with the killing of Shobha by the accused. Second point is that a week prior to the incident the victim was residing with her parents. Even thought this is held proved nothing turns on that. The third point regarding accused and the victim staying together, as admitted, cannot be merely a ground to murder the victim. The fact that there was smell of insecticide is also proved. But there is no evidence to link the accused No.1 to strangulation or administration of poison. In fact the report given to the police patil is that she died of consuming poison. This was told to P.W. 7 by Nanasaheb Kolekar that Nanasaheb is not examined.

6. The learned Judge was wrong in holding that the cause has been given on behalf of the accused that Shobha committed suicide. With respect the learned Judge has put wrong burden on the accused. Apart from that the contention the prosecution has accepted that Shobha was ill and unable to conceive and therefore was murdered, then that itself can be a cause for committing suicide. Then the learned Judge finds fault with the accused in not informing the Police Patil P. W. 7 about death of wife. No law fastens such responsibility on the accused and apart that Police Patil was informed of the death and he was told by Nanasaheb Kolekar that the death was due to consumption of poison. It was therefore the duty of the prosecution to examine this person.

7. It is proved on record that there was stink of poison on that spot , there there was consumption of poison by the victim and that there is an attempt of strangulation

also. It is stated by P. W. 7 that the cause of death is consumption of poison. In view of the fact that consumption of poison is proved by the prosecution then it is not possible to set aside the possibility of suicide by consumption of poison There must be overwhelming substantial evidence to prove that the strangulation was at the instance of the accused only. The prosecution itself has prosecuted three persons for murder of Shobha. Who of three strangulated is not proved at all. In such circumstances the circumstantial evidence, in our opinion, is grossly inadequate to sustain the order of conviction., We have given our reasons as to why reasoning of the learned trial Judge is not acceptable to us. In the result, therefore, the appeal succeeds and is allowed. The order of conviction and sentence is set aside. The appellant-accused be set at liberty forthwith if not otherwise required.